

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COLUMBIA GAS TRANSMISSION
CORPORATION,

Plaintiff,

v.

AN EASEMENT TO CONSTRUCT,
OPERATE AND MAINTAIN A 24-INCH
GAS TRANSMISSION PIPELINE ACROSS
PROPERTIES IN CHESTER COUNTY,
PENNSYLVANIA, OWNED BY JAY PAR
AND PAR ANBIL, et al. and UNKNOWN
PERSONS AND INTERESTED PARTIES,

Defendants.

C.A. No. 02-CV-3733

**PLAINTIFF COLUMBIA GAS TRANSMISSION CORPORATION'S
MOTION TO STRIKE OR DISMISS COUNTERCLAIM FILED
BY DEFENDANTS SCOTT R. AND KERSTIN R. MARCUM**

The defendants Scott R. and Kerstin R. Marcum (the "Marcums") filed a counterclaim to the condemnation Complaint filed by the plaintiff Columbia Gas Transmission Corporation ("Columbia"). Rule 71A of the Federal Rules of Civil Procedure governs the procedures to be followed in this action. Rule 71A permits defendants in a condemnation action to file an "Answer" if they have "any objection or defense to the taking of the property." Fed.R.Civ.P. 71A(e). All defenses and objections not presented in the Answer are waived. Id. "No other pleading or motion asserting any additional defenses or objection shall be allowed." Id.

The Marcums filed an Answer and Counterclaim. Because no pleading other than an "Answer" is permitted under Fed.R.Civ.P. 71A, Columbia moves to strike or dismiss the Marcums' Counterclaim. Dismissal of the Marcums' counterclaim will not prejudice the Marcums' in any way because the declaratory judgment sought in their Counterclaim merely duplicates the objections raised in their Answer. Compare Answer at p. 4 (first Affirmative

Defense) with Counterclaim. In any event, the Marcums retain the right to contest the amount of just compensation due for the taking.

WHEREFORE, Columbia moves to strike or dismiss the Counterclaim filed by the defendants Scott R. and Kerstin R. Marcum.

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ORDER

Upon consideration of Plaintiff Columbia Gas Transmission Corporation's
Motion to Strike or Dismiss Counterclaim Filed by Defendants Scott R. and Kerstin R. Marcum,
the Motion is hereby granted.

Date: _____

U.S. District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served by first class mail, postage prepaid, upon the following:

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